

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. CBA-525-A

PETITION OF GIRL SCOUT COUNCIL OF THE NATION'S CAPITAL

OPINION OF THE BOARD

(Public Hearing Date: May 22, 2002)
(Effective Date of Opinion: June 26, 2002)

Case No CBA-525-A is an application by the Girl Scout Council of the Nation's Capital for a modification to an existing special exception for a summer day camp to permit transportation of campers to the subject property by private car. Pursuant to Section 59-A-4.11, on May 22, 2002 the Board of Appeals held a public hearing on the modification request. Sandra King-Shaw appeared on behalf of the Girl Scout Council. Cindy Gilman, Ellen McAdams and Christine Stone also testified in support of the application.

Martin Klauber, Esquire, Peoples' Counsel for Montgomery County also appeared.

The Board received no correspondence or testimony in opposition to the request.

Decision of the Board: Special Exception Modification **Granted**,
Subject to conditions enumerated below.

EVIDENCE PRESENTED

1. Case No. CBA-525 is a special exception granted by the Board of Appeals on June 3, 1957 to the Girl Scouts of D.C. and Montgomery County, to permit a girl scout day camp.
2. Case No. CBA-525-A requests modification of the special exception to allow transportation of campers to the site by private car rather than by school bus.
3. At the time the special exception was granted, the subject property was known as part of the "Parkway Tract", it is now known as Cabin John Regional

Park, owned by the Maryland National Capital Park and Planning Commission, and is located at 7701 Tuckerman Lane, Rockville, Maryland, in the R-90 Zone. The Girl Scouts utilize the Robert C. McDonnell Campground, located in the park.

4. The Girl Scouts conduct a summer camp for two, two-week sessions, each serving no more than 110 children. There will be 35 staff members per session.

5. The hours of operation for the camp will be Monday through Friday from 9:20 a.m. to 3:25 p.m.

6. The opinion granting the special exception states: "Transportation to and from the premises will be in Montgomery County School buses."

7. The Girl Scout Council requests approval of its current practice of having children transported to and from the camp in carpools. Ms. King-Shaw explained the change in transportation practice occurred because parents felt it was safer to transport children in private cars, as buses do not have seatbelts.

8. Ms King-Shaw stated that the process does not interfere with traffic on Tuckerman Lane. No children can be dropped off before 9:20 a.m., after the morning peak rush hour, and camp is over by 3:30 p.m., before the evening peak rush hour. No left turns are permitted across Tuckerman Lane near the subject property. The drop-off and pick-up area for the camp is out of the right-of-way along Tuckerman Lane. A gravel parking area adjacent to the entrance of the Robert C. McDonnell Campground leads into the campground, with a wooden bridge. [Exhibit No's. 5(b) and 5(c)] A drop-off lane for cars is demarcated along Tuckerman Lane with traffic cones, directing cars into the drop-off/pick-up area. Two adults and some of the older campers, age 15-16 supervise the drop-off and pick-up of campers. Girl Scout personnel testified that there are no traffic back-ups onto Tuckerman Lane during drop-off or pick-up.

9. Ms. King-Shaw further stated that when campers are accepted into the camp, families receive a letter with instructions about the carpooling procedures [Exhibit No. 14].

10. The Applicant submitted a Transportation Management Plan into the record [Exhibit No. 11(b)].

11. Maryland National Capital Park and Planning Commission (MNCPPC) technical staff reviewed the modification request and recommended approval, with conditions [Exhibit No. 12]. MNCPPC Transportation Planning staff found that there is no traffic impact associated with the camp. Staff notes that although summer day camps are no longer permitted under the Zoning Ordinance, Section 59-G-4.1 of the Zoning Ordinance provides for the continued use of

nonconforming uses if the “building or structure was substantially completed before: (a) June 1, 1958.” The staff finds that since the summer camp was approved in 1957, it is ‘grandfathered’, and can continue, with the requested modification in transportation procedures.

FINDINGS OF THE BOARD

Section 59-G-1.3(c)(4) of the Zoning Ordinance provides, pertaining to hearings on modification applications:

The public hearing shall be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to discussion of those aspects of the special exception use that are directly related to those proposals.

The Board limits its analysis to the requested change in mode of transportation of campers to the campsite.

Section 59-G-1.2.1. Standard for evaluation:

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of the adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The Board finds that the requested modification has no non-inherent impacts.

59-G-1.21. General Conditions.

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

The existing summer camp can continue as a non-conforming use, with the revised transportation plan.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Board finds that although the use 'summer day camp' does not exist in Section 59-G-2. of the Zoning Ordinance, the use was found to comply with the applicable standards at the time of the Board's Opinion granting the special exception and the requested modification can be granted without interfering with that compliance.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board finds that Master Plan consistency was addressed at the time of the original special exception decision. The existing summer day camp is conducted at the Robert C. McDonnell Campground, located in Cabin John Regional Park, which is owned by the Maryland National Capital Park and Planning Commission. Although the special exception category no longer exists, MNCPPC technical staff recommends that the existing camp can continue as an existing non-conforming use.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The Board finds that the requested modification in mode of transportation of campers, conducted in accordance with the Transportation Management Plan, and as described at the public hearing, does not interfere with traffic on Tuckerman Lane, and is in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the carpool procedures for the camp prevent any adverse effects to properties surrounding the subject property.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The requested change from use of school buses to carpools will have none of the listed adverse effects.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The requested modification will not increase the intensity of the existing special exception use.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the use of carpools, rather than school buses, to bring campers to the site, as described in the evidence and testimony presented at the public hearing, and as conditioned below, is safe for the campers, and avoids any adverse impact upon traffic on Tuckerman Lane.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The subject property is served by adequate public services.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public*

facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

Not applicable.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board finds that the use of carpools, rather than school buses, to bring campers to the site, as described in the evidence and testimony presented at the public hearing, and as conditioned below, is safe for the campers, and avoids any adverse impact upon traffic on Tuckerman Lane.

Therefore, based upon the foregoing the Board finds that the requested modification can be granted subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the modification.
2. All terms and conditions of the existing special exception together with any modifications granted by the Board of Appeals shall remain in full force and effect.
3. Hours of operation for the camp shall be: Monday through Friday from 9:20 a.m. to 3:25 p.m.
4. There will be two, two-week sessions, with a maximum of 110 campers in each session.
5. The Board adopts the Transportation Management Plan submitted into the record as Exhibit No. 11(b), with the following amendment: there shall be two adults present to supervise both drop-off and pick-up of campers.
6. The camp will continue to provide its carpooling instructions [Exhibit No. 14] to the family of each camper in advance of each session.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of June, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

